A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 2201 OF 2006

PETITIONER : Mahettar Patel, aged about 65 years son of Shri Niranjan Patel, occupation – agriculturist, resident of village Kapudihi, Tah. Basna, Distt. Mahasamund (C.G.) (Earlier Distt. Raipur (C.G.). since-Niranjan died.

Versus

RESPONDENTS:

1. State of Chhattisgarh, Through-Secretary, Department of Revenue, Dau Kalyan Singh Bhawan, Mantralay Raipur (C.G.)
2. Collector, District Mahasamund (C.G.).
3. Sub Divisional Officer (Revenue) Mahasamund (C.G.)
4. Sukhiram, aged about 60 years, son of Shri Samaru, caste Kanwar, resident of village Palsapali, Tahsil Bilaigarh, Distt. Raipur (C.G.)
5. Dukhiram, aged about 65 years, son of Shri Samaru, caste Kanwar, resident of village Palsapali, Tahsil Bilaigarh, Distt. Raipur (C.G.).

Present : Shri A.N. Bhakta, learned counsel for the petitioner.
Shri Yaswant Singh, learned G.A. for the respondents.

(ORAL ORDER)
(Passed on 27th April, 2006)

This case is hopelessly barred by limitation and unreasonable delay and laches. The order dated 06-01-1993 passed by the Sub Divisional Officer (Revenue), the 3rd respondent herein under section 170(B) of the C.G. Land Revenue Code, 1959 (for short "the Code") was assailed

before the Collector, Mahasamund, the 2nd respondent herein on 07-06-1993, after expiry of the limitation of 45 days prescribed by the statute. Therefore, the Collector dismissed the appeal by his order dated 28-10-1998. The second appeal was preferred to the Commissioner, Department of Revenue after a lapse of 218 days, whereas he ought to have filed within the specified limitation of 60 days. Therefore, the Commissioner also dismissed the appeal on the ground of limitation by his order dated 16-01-2002. Against the said order, the instant writ petition was presented before this Court on 25-04-2006, after a lapse of more than 4 years and 3 months.

(2) I have perused the writ petition. Not a single word of explanation is offered for the inordinate delay of more than 4 years and 3 months. However, it is the contention of the learned counsel for the petitioner that since the order passed by the 3rd respondent is one without jurisdiction, such an order could be assailed at any point of time. In the first place, submission of the learned counsel that the order made by the SDO is one without jurisdiction is not well-founded. The 3rd respondent is a Statutory Authority to exercise the power under Section 170 (B) of the Code. Alternatively, it needs to be noticed that the submission made by the learned counsel that the Court cannot dismiss the writ petition wherever it finds that the impugned order is one without authority of law is required to be noticed only to be rejected. On the other hand, it is settled law that even if an order made by a Court or *Quasi* Judicial Forum or Authority is one without authority or jurisdiction, such order will remain *de facto* order and it will have full legal force and consequence, unless in an appropriate proceeding such order is set aside or quashed by the Court above. Here is a case where the petitioner is guilty of sleeping over the matter at every

stage of the proceedings. He filed the first appeal before the Collector and the second appeal before the Commissioner, Department of Revenue after the prescribed limitation and he is approaching this Court invoking discretionary power vested in this Court under Article 226 of the Constitution to exercise in his favour, after a lapse of more than 4 years and 3 months, without offering even a word of explanation for this inordinate delay.

(3) It is well known principle that the Court helps diligent and not indolent who sleeps over his right. Though, there is no specific period of limitation, the High Court may refuse to exercise its extraordinary, discretionary power under Article 226 of the Constitution where the petitioner is guilty of laches or undue delay, for which there is no satisfactory explanation. Unless the facts and circumstance of the case clearly justify the laches or undue delay, the petitioner could not be entitled to relief. It is imperative, if the petitioner wants to invoke the extraordinary remedy available under Article 226 of the Constitution, that he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will be a good ground for refusing to exercise the discretion. It is essential that persons who are aggrieved by any order of the Government or any executive action or order of any statutory authority should approach the High Court with utmost expedition. The underlying object is that the Courts do not encourage agitation of State claims and exhuming matters which have already been disposed of or where the rights of the third parties have accrued in the meantime, or where there is no reasonable explanation for delay. This principle applies even in case of infringement of fundamental rights. Where there is inordinate delay in filing a writ petition under Article

226 of the Constitution, the High Court may refuse to exercise its discretionary powers. The fact that third party's rights were not created is hardly a ground for interference. This principle also applies to orders which are void. Very recently, in **State of Rajasthan Vs. Laxmi**[1] the Supreme Court pleased to hold that :

> "Though the order may be void, if the party does not approach the court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. *When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void."*
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> (emphasis supplied)

(4) There is no hard and fast rule as to when the High Court should refuse to exercise its discretion in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the Court. However, that discretion must be exercised judiciously and reasonably.

(5) In **Tilokchand Motichand v. H.B. Munshi** [2] , Hidayatullah, C.J. was pleased to observe :

> "The question is one of discretion for this court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some article but this court need not necessarily give the total time to the litigant to move this court under Article 32. Similarly, in a suitable case this court may entertain such a

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1. (1996) 6 SCC 445 (453).
2. AIR 1970 SC 898 : (1969) 1 SCC 110.

petition even after a lapse of time. *It will all depend on what the breach of the Fundamental Right and the remedy claimed are and when and how the delay arose.*"

(emphasis supplied)

(6) In **P.S. Sadasivaswamy v. State of T.N.** [3], the Supreme Court observed thus :

"It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But *it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.*"

(emphasis supplied)

(7) As pointed out supra, in this case, the petitioner was guilty of laches in pursuing the legal remedies before the appellate authorities under the Code as well as before this Court. Although, the petitioner has filed this writ petition after a delay of 4 years and 3 months, not one word of explanation is offered in the writ petition. On the other hand, in para 4 of the writ petition he has stated that *"there is no delay in filing the instant case and it is well within the period of limitation."* Quite curious and strange assertion indeed ! All the three Statutory Authorities have refused the relief to the petitioner. On merit also, I am satisfied that there is no failure of justice. In the circumstance, I dismiss this writ petition being devoid of merit and also on the ground of delay and laches. No costs.

Sd/-
Chief Justice

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3. AIR 1974 SC 2271 : (1975) 1 SCC 152